APPENDIX

APPENDIX A

In the

United States Court of Appeals

For the Seventh Circuit

CHICAGO, ILLINOIS 60604

March 16, 1973

Before

HON. ROBERT A. SPRECHER, *Circuit Judge*
HON. ROBERT A. GRANT, *Senior District Judge*
HON. MYRON L. GORDON, *District Judge*

ARGUED FEBRUARY 20, 1973

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

No. 71-1876 vs.

JOSEPH JEROME SCALISE,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 71 CR 49 — Alexander J. Napoli, Judge.

ORDER

Defendant Joseph Jerome Scalise was convicted upon a jury trial for unlawful possession of goods in excess of $100 stolen from an interstate shipment of freight in violation of 18 U.S.C. §659. He was sentenced to the custody of the Attorney General for eight years.

Upon appeal, defendant raises two principal contentions. First, he contends that the evidence of his possession of the stolen goods was insufficient. A one-thousand carton load of Sears Roebuck and Company merchandise in interstate commerce was stolen on October 26, 1970. Ten days later the police discovered a small van parked in Oak Park, Illinois, packed with cartons visibly bearing Sears' labels. While the police maintained a surveillance, defendant drove his automobile up behind the van, a passenger exited from defendant's car and entered the van. The van then pulled away, followed closely by defendant, who, when he noticed the police in pursuit of the van, tried to block them. Both defendant and the van were stopped. The cartons in the van were proved to have been part of the stolen shipment. A Sears' catalog found on the right front seat of the van had the stolen items circled and contained fifteen latent fingerprints of the defendant. "[T]he inferences which could be reasonably drawn from the evidence as to appellant's relationship to the goods place the case within the ambit of the cases in which the evidence of possession — actual or custructive — has been thought sufficient." *United States* v. *Casalinuovo,* 350 F.2d 207, 209 (2nd Cir. 1965).

Second, defendant contends that it was reversible error (1) to omit an aiding and abetting count in his indictment and (2) to instruct the jury on aiding and abetting, and that (3) the evidence was insufficient to support his conviction as an aider and abettor. These contentions are all answered by *Levine* v. *United States,* 430 F.2d 641, 643 (7th Cir. 1970), *cert. denied,* 401 U.S. 949 (1971), where we concluded that "there was no error in permitting his conviction upon proof that he was an aider and abettor on an indictment which charged him only as a principal."

The conviction is affirmed.

AFFIRMED